

**REMARKS**

Applicant respectfully requests entry and consideration of the above amendments even though presented after a final rejection. Applicant submits that the amendments do not raise new issues or require a new search. Further, entry and consideration of the amendments may isolate issues for potential allowance or appeal. The amendments were not presented earlier in the prosecution due to a better understanding of the Examiner's position as reflected in the latest Office Action.

**Summary**

Claims 1-3, 5, 7-16, 19 and 20 stand in this application. Claims 4, 6, 17 and 18 have been canceled without prejudice. Claims 1 and 14 are currently amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

**Examiner Interview**

Applicants would like to thank Examiner Shah for conducting a telephone interview with Applicants' representative on April 17, 2008. During the interview, Examiner Shah and Applicants' representative discussed the independent claims, the applied references, and the grounds of rejection. The substance of the interview is reflected by the foregoing amendments and the following remarks.

**35 U.S.C. § 103**

At page 4, paragraph 6 claims 1, 5, 8, 9, 13, 14, 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,180,892 to Tackin (hereinafter “Tackin”) in view of U.S. Patent No. 6,862,298 to Smith et al (hereinafter “Smith”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C. § 103(a) the cited references, when combined, must teach or suggest every element of the claim. *See* MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1, 5, 8, 9, 13, 14, 19 and 20. Therefore claims 1, 5, 8, 9, 13, 14, 19 and 20 define over

Tackin and Smith whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

determining by a voice activity detector whether said audio information represents voice information; and  
buffering said audio information in a jitter buffer after said determination

According to the Office Action, the above recited language is disclosed by Tackin at Figure 6 and columns 13-14. Applicant respectfully disagrees.

Applicant respectfully submits that Tackin fails to disclose the claimed subject matter. For example, Tackin at Figure 6 arguably discloses packets entering depacketizing engine 84, which then forwards the packets to voice queue 86 and voice synchronizer 90. As disclosed by Tackin at column 13, lines 18-27, the jitter buffer includes voice queue 86 and voice synchronizer 90. As clearly disclosed by Figure 6, packets are not received by VAD 98 until after they have been processed by the jitter buffer. By way of contrast, the claimed subject matter discloses “determining by a voice activity detector whether said audio information represents voice information” prior to “buffering said audio information in a jitter buffer.” During the determination, the claimed subject matter determines “an end to said voice information based on said measurements and a delay interval” and adjusts “said delay interval to correspond to an average packet delay time.” The claimed subject matter adjusts the delay interval based upon an average packet delay time prior to buffering audio information in the jitter buffer. Therefore, Tackin fails to disclose, teach or suggest the missing language. Applicant respectfully submits that he is unable to locate the claimed subject matter within the cited portions of Smith. Consequently, Tackin and Smith, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See MPEP § 2143.03*, for example. Accordingly, removal of the obviousness rejection with respect to claims 2, 3, 5, 7 and 8 is respectfully requested. Claims 2, 3, 5, 7 and 8 also are non-obvious and patentable over Tackin and Smith, taken alone or in combination, at least on the basis of their dependency from claim 1. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Independent claims 9 and 14 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 9 and 14 are non-obvious and are patentable over Tackin and Smith for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 9 and 14. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 10-13, 15, 16, 19 and 20 that depend from claims 9 and 14, and therefore contain additional features that further distinguish these claims from Tackin and Smith, whether taken alone or in combination.

### Conclusion

For at least the above reasons, Applicant submits that claims 1-3, 5, 7-16, 19 and 20 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-3, 5, 7-16, 19 and 20 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC



---

Robert V. Racunas, Reg. No. 43,027  
Under 37 CFR 1.34(a)

Dated: May 14, 2008

Kacvinsky LLC  
C/O Intelleivate  
P.O. Box 52050  
Minneapolis, MN 55402  
(724) 933-5529